IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 3367 of 2004

PRINCIPAL INVESTIGATOR & COORDI.& ANR
V/S
CHANDRA PRAKASH & ANR

Mr. ASHOK CHHANGANI, for the appellant / petitioner

Date of Order : 23.9.2004

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the petitioner.

Assailing the impugned Award Annex.1 passed by Labour Court, it is contended by learned counsel for the petitioner, firstly that in the present case, the workman has approached the Labour Court after expiry of 10 years and, therefore, in view of the Judgment of Hon'ble Apex Court in Indian Iron & Steel Co. Ltd. Vs. Prahlad Singh, reported in [2001 (1) SCC 424], he is liable to be declined relief. Other submission made is, on the authority of Judgment of Hon'ble Apex Court reported in 1998(8) SCC,733 (State of Haryana Vs. Om Parkash and anr.), that where the workman had himself stopped to report for duty and remained absent, it cannot be said that he was retrenched from service. According to the learned counsel, here in this case, the workman had stopped to report on duty, and he was terminated w.e.f. 1.4.86, and it is not the case of workman, that he ever approached the employer, or even orally requested the employer to provide him employment, and as to what was the response of employer, rather there is no application pending. In that view of the matter, natural inference is, that by keeping silent for 10 years, it should be inferred that workman abandoned the job, or that he was least interested in job. In view of above, he is not entitled to any relief.

The next submission made is, that it was for the workman to show, that he worked for 240 days continuously in one calendar year, while there is no iota of evidence from the side of workman on record, showing that he worked for 240 days. Since workman has to stand on his own legs, finding of learned Labour Court about the completion of 240 days, is liable to be set aside.

I have considered the submissions made by the learned counsel for the petitioner, and also perused the impugned award, and find, that so far as delay is concerned, true it is, that workman had come after 10 years, but then, as appears from the impugned Judgment, that workman had come with the case, that after the removal, he was continuously approaching the employer for reinstatement, moved the application as well, but every time, he was given assurances, and was assured for reinstatement, and that the orders will have to be required from the Head Office, which will take time, and thus he was not reinstated. It is also the case of workman, that like petitioner, one Jethu Singh was also retrenched from services w.e.f. 1.12.85, but he raised an industrial dispute after a period of 9 years, and vide Award dated 18.4.1996 he was ordered to be reinstated. This is how the workman has tried to explain the delay. Of course, from the side of petitioner, stand was taken in reply, to the effect that the workman himself voluntarily went away from job, and never asked for reinstatement, and has approached the Labour Court after 10 years, during which period, he worked at other places. In other words, stand of petitioner, on the other hand, appears to be, and as contended by counsel for the petitioner also, that it was workman who had abandoned the job. Learned Labour Court has considered this aspect at page no.4 of the Award, and has taken into account, another Judgment of Hon'ble Apex Court passed in Ajayab Singh Vs. Sirhind Cooperative Marketing-cum-Processing Service Society, reported in JT 1999(3) SC 38,

and few other Judgments of this court, and on that basis found, that solely on the ground of delay, relief cannot be declined to the workman, rather on that count, relief to be granted to the workman can be suitably modified only, and on that basis, workman has not been awarded back-wages at all.

Having gone through the Judgment of Hon'ble Supreme Court in Indian Iron' case (supra), what I find is, that apart from delay, there was other circumstance also, dis-entitling the workman to reinstatement, and also appreciating the circumstances in which workman was removed, and the great delay with which the workman had approached, delay was considered by Hon'ble Apex Court as one of the circumstance, coupled with dis-entitlement of workman, to be the ground to decline the relief of reinstatement. In the present case, learned counsel for the petitioner was specifically asked, as to, apart from delay, what is other ground to disentitle the workman to reinstatement, to which learned counsel for the petitioner stated, that workman has not completed 240 days, and he approached the Labour Court after a period of 10 years. However, since I am of the view that, from record, it is clear that workman had completed 240 days, (though I shall deal with the aspect of completing of 240 days in the later part of the order), solely on the ground of delay, and on the basis of Judgment of Indian Iron's case (supra), relief of reinstatement could not be declined, as the workman has come with the explanation about delay, and about his regularly approaching the employer, and about being given assurance, and that orders were required to be obtained from the higher authorities. At this place I may also invoke the principles propounded by Hon'ble the Supreme Court in Haryana Financial Corporation Vs. Jagdamba Oil Mills, reported in 2002 WLC(SC)-210, wherein Hon'ble the Supreme Court in para-19 has held as under:-

> "19. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are not to be read as Euclid's theorems nor as provisions of the statute. These observations must be read in the context in which they appear. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes, their words are not to be interpreted as statutes"
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> (*Emphasis supplied*)

Likewise, Hon'ble the Supreme Court in Megh Singh Vs. State of Punjab, reported in JT 2003 (Suppl.1) SC-257, has held in para 17 as under:-

> "Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases or between two accused in the same case. Each case depends on its own facts and a close similarity between one case and another is not enough because a single significant detail may alter the entire aspect."
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> (*Emphasis supplied*)

Similarly in Ramesh Singh Vs. State of A.P., reported in 2004 AIR SCW-3682, considering the aspects of precedents, Hon'ble the Supreme Court in para-11 has held, that unless and until the facts and circumstances in a cited case is in *pari materia* in all respects with the facts and circumstances of the case in hand, it will not be proper to treat an earlier case as a precedent, to arrive at a definite conclusion.

Thus, if the case in hand is considered on these parameters, it is clear, that the workman could not be denied relief of reinstatement on the basis that in India Iron's case Hon'ble the Supreme Court had found the workman to be not entitled to relief of reinstatement as workman had approached the Labour Court after a period of 13 years.

That apart, similarly situated Jethu Singh, who was removed in the year 1985, had approached the Labour Court in the year 1995, and he has been ordered to be reinstated by Labour Court on 18.4.96. It is not shown on the side of the petitioner that award in Jethu Singh's matter does not hold good, having been set aside by the superior courts in hierarchy. In that view of the matter, solely on the ground of delay, the relief of reinstatement should not be declined to the workman. So far Om Prakash's case is concerned, that it is a case entirely distinguishable on facts, inasmuch as, in that case in para-3 Hon'ble the Supreme Court positively found, that there is no evidence that the workman had worked for 240 days, to satisfy Section 25-B of the Act, and it was also positively found, that workman had himself voluntarily ceased to report for duty. Likewise it was also found that "there was no act on the part of the employer nor is there anything on record to suggest that the employer had refused work to him". While all these things are otherwise in the present case.

Now I take up the next aspect, being about the completion of 240 days by workman. In the claim petition, it was clearly claimed, that the workman was appointed in February, 1985 and had worked up to 31.3.86 continuously, and thus had worked for 258 days. As against this, in reply, the case of the petitioner is, that workman worked for only 191 ½ days in the year 1985, and in the year 1986 he worked for only 73 days. Learned counsel for the petitioner was specifically asked the duration of period of working of 191 ½ days during year 1985, so as to show, that after taking into account 73 days in the year 1986, the workman may not have completed 240 days as required by Sec. 25-B, but then learned counsel for the petitioner expressed his inability to give the break-up.

It is significant to mention here that this is not in dispute that

workman was employed in February 1985, and even according to workman, he had worked only up to 1986. Thus during this period, workman had worked 258 days, while according to employer/petitioner, workman had worked for 264 ½ days. In these circumstances, in absence of any positive fact, being projected, from the side of petitioner, about workman not completing 240 days during preceding 12 calendar months, coupled with the fact, that petitioner's witness Sh. R.C. Bhandari, categorically admitted in cross-examination, that workman has completed 240 days during the preceding calendar year, it cannot be said that Labour Court has gone wrong in coming to the conclusion, that workman had worked for 240 days during the preceding twelve calendar months. It appears that the learned counsel felt that 240 days should be completed during one calendar year i.e. Jan. to Dec. of any particular year; while the requirement is of working for 240 days during preceding twelve calendar months, i.e. during the period April 85 to end of March 86. If considered on this standpoint, it is clearly admitted position on the side of the petitioner that the workman had worked for 240 days.

A submission made by learned counsel for the petitioner, that simply because the petitioner's employee has deposed something in cross-examination, that cannot be taken advantage of by the workman. Suffice it to say, that cross examination is very much a part of the statement and the admission made by petitioner's witness is clearly an admission, and is very much binding on the petitioner, more particularly as no attempt was made by the petitioner to have the admission made in cross-examination explained, by requesting for re-examination of the witness.

Then I take up the contention about the workman having been employed under a scheme, and the job coming to an end on completion thereof. From the impugned Award, it transpires, that petitioner's

specific case was, that workman was employed under a project/scheme, being RES scheme, which was to be completed on 31.3.86, and with completion of that scheme, services of workman came to an end. It is common case of the parties, that workman had worked upto 31.3.1986. The question in these circumstances is, as to whether workman was employed under scheme or not? The case of workman is, that he worked from Feb.1985 continuously upto 31.3.86, and thereafter he was removed by oral order on 1.4.86. As against this, the case of petitioner is, that workman was employed under the scheme, and on completion of scheme, his services automatically came to an end. In these circumstances, petitioner has to establish, that workman was employed under any scheme, and to show that because of terms of appointment, his services came to an end. While, as found by learned Labour Court, that petitioner has not produced any record in this regard, rather petitioner's witness has clearly admitted, that he does not know when the scheme came to an end, and when it started. He further admitted, that file in this regard is available in the office, but same was not produced. It being the petitioner's positive case, that the workman was employed under the scheme, the burden was on the petitioner to prove, that the workman was appointed under the scheme, and for that purpose, obviously, it was for the petitioner to have produced the material on record in that regard, which the petitioner has failed to produce. In that view of the matter I do not find any error on the part of the learned Labour Court in drawing the adverse inference for non-production of record to show about employment of workman being under a scheme.

That being the position, when the petitioner has failed to establish, that workman was employed under any scheme, it cannot be said that services of employee came to an end, and since according to workman, he had been orally removed w.e.f. 1.4.86, he was continuously

approaching the authorities concerned, it cannot be said that workman was employed under any scheme, so as exclude the removal of the workman from the definition of retrenchment under Sec. 2(oo) of the Industrial Disputes Act, or to hold, that it is workman who abandoned the services.

The writ petition, thus having no force, is hereby dismissed summarily.

(N P GUPTA),J.

/Srawat/